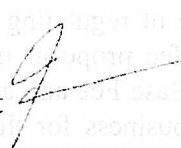


MEMORANDUM

DATE: May 12, 2011

TO: Honorable San Diego City Council Members
Honorable Mayor Jerry Sanders

FROM: Fred Glick, CRA SD County Chapter President 

SUBJECT: CRA SD County Chapter Entertainment Permit Fee Proposal

Background

Under the San Diego Municipal Code §33.1501, the Chief of Police is authorized to regulate businesses and events which provide entertainment through the permitting process. The fees assessed to "entertainment permits" cover the expense necessary to monitor and regulate the activities related to businesses or events that require the permit.

On March 10, 2009, the San Diego City Council unanimously approved a General Fund User Fee Policy for the purpose of achieving full cost recovery for all city services. In accordance with this policy, the San Diego Police Department began to review all user permit fees. On April 14, 2011, under the Proposed Budget Fiscal Year 2012, the San Diego Police Department proposed an increase to all entertainment permit fee categories.

Permit Type	Current	Proposed	Percent Change
Entertainment Permit Single Occasion <50 People	\$189	\$201	6%
Entertainment Permit Single Occasion 50+ People	\$379	\$1,252	230%
Entertainment Permit w Alcohol <50 People	\$920	\$938	2%
Entertainment Permit w Alcohol and 50+ People	\$1,840	\$3,253	77%
Entertainment Permit W/O Alcohol <50 People	\$126	\$283	124%
Entertainment Permit W/O Alcohol 50+ People	\$184	\$718	290%

Source: Office of Independent Budget Analyst – City of San Diego

In light of the City of San Diego's 2009 full cost recovery policy and recent proposal to increase the entertainment permit fee, the San Diego County Chapter of the California Restaurant Association (SDCRA) proposes a comprehensive restructuring to the entertainment permit process with the overall goal of ensuring a safe and responsible entertainment environment that provides consistent enforcement to all.

Proposal

The entertainment permit fee proposal by SDCRA is based on the belief that the current fee structure inequitably spreads the cost of enforcement across all permit holders. This one-size fits all approach only penalizes permittees that operate in compliance of their permit conditions and require minimal enforcement. Unfortunately, the current fee structure requires these permittees be assessed at the same rate as permittees who require additional enforcement resources.

Therefore, the entertainment permit fee proposal seeks to appropriately assign the expense of regulating businesses that need additional enforcement. The entertainment permit fee proposal includes the development of a two-tiered entertainment program with a Base Fee and an Enforcement Fee. The base fee would encompass the basic cost to the business for the processing required for the renewal of the permit and annual inspection(s) to ensure compliance. The enforcement fee would be assessed in addition to the base fee for all additional enforcement and borne by the permittee in violation.

Base (Regulatory) Fee

There is a basic cost to regulate even the most responsible entertainment businesses. Any business that holds an entertainment permit should expect a basic level of oversight from the San Diego Police Department (SDPD) Vice Unit. The base fee that will be charged to all entertainment permit holders should fully recover the cost to SDPD Vice to provide minimum regulatory activity including:

1. Primary application/Renewal of application
2. Annual inspection from SDPD Vice to ensure compliance

Enforcement Fee

Businesses that operate with entertainment permits and that require additional enforcement above and beyond what is provided for in the Base Fee shall be charged an additional fee based on the time spent on this additional enforcement. Enforcement fee(s) should be fully cost recoverable based on the fully loaded cost of the personnel that worked on the regulation multiplied by the number of hours spent. Enforcement Fees should include:

1. Full cost recovery to service violations of permit or conditions on the permit.
2. Assessment Report: Full cost recovery for assessment of violation(s) to include: list of violations, number and type of personnel and corrective recommendation.

Assessment Report

Additionally, entertainment permittees recommend the San Diego Police Department (SDPD) Vice Unit develop "Assessment Reports" for any business that requires additional enforcement. The report should include a summary of enforcement action(s) taken and necessary corrective action the permit holder can take to come into compliance. This report would not reveal SDPD enforcement techniques, only total hours of enforcement, infraction data and recommendations to businesses to become compliant with conditions.

We believe by providing an assessment report to those permittees that out of compliance will educate permittees on specific violations and provide clarification for the additional charges. Furthermore, this method would incentivize permittees in violation to come into compliance more quickly so as not to incur additional fees.

"Bona Fide Restaurant" Exemption from Permit Requirement:

In addition to developing an equitable two tiered permit fee structure, SDCRA proposes two amendments to the City of San Diego Municipal Code §33.1502 and §33.1504. Please refer to *Appendix A* for proposed amended language.

Appeal Process

The existing appeal process should remain intact. It is important that a process be included for businesses who believe they have been treated unfairly or unjust. We firmly believe that the existing appeal process provides this remedy.

Pilot Program

A yearlong pilot program should be instituted as a trial period for this new entertainment permit fee structure. Through the first year of the program it will become clear if the assumptions that formed the base fee were accurate. It is the belief that the proposed fee structure, if implemented, will incentivize businesses to come into compliance and therefore require less enforcement than previously estimated.

Appendix A

§33.1502 Definitions

For purposes of this Division:

“*ABC License*” means the license issued by the California Department of Alcoholic Beverage Control.

“*Admission Charge*” means any charge for the right or privilege to enter any place of *entertainment* including a minimum service charge, an event charge, a cover charge, a charge for the use of seats and tables, or any other similar charge. It also includes the purchase or presentation of a ticket or token directly or indirectly required as a condition for entrance. It does not include tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing *entertainment*.

“*Conditional use permit*” means any permit issued by the City of San Diego pursuant to Chapter X, Article 1, Division 5, or pursuant to a planned district ordinance, upon which the *Chief of Police* has had a meaningful role in determining conditions on the *permit* related to the operation of a *public dance, entertainment, or amusement premises*.

“*Dance and dancing*” means movement of the human body, accompanied by music or rhythm.

“*Entertainment*” or “*Entertainment Establishment*” means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons, including:

- (a) Presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, musical song or dance acts, plays, concerts, any type of contest; sporting events, exhibitions, carnival, rodeo or circus acts, demonstrations of talent; shows, reviews, any other such activity which may be attended by members of the public.
- (b) *Dancing* to live or recorded music.
- (c) The presentation of recorded music played on equipment which is operated by an agent or contractor of the establishment, commonly known as “DJ” or “disc jockey.”

“*Theater*” means any commercial establishment where regular theatrical performances, such as performances of literary compositions that tell a story, are given, usually on a stage, and usually with ascending row seating or some arrangement of permanent seating.

(“*Cabaret — Entertainment Regulated*” repealed and “*Definitions*” added 11-20-2000 by O-18887 N.S.)

"Bona fide Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health.

A restaurant may provide entertainment for the customer by performers of the arts (music, dance, comedy, readings, etc) and differs from a Night Club in that customer dancing is prohibited. A restaurant must prepare and serve food at all times during business hours and the sale of alcoholic beverages is no greater than the sale of food.

§33.1504 Exemption from the Permit Requirement

(o) Any establishment, venue or assemblage of ~~49 persons or less, as described in the maximum occupancy load~~ provided that all the following conditions exist:

(1) There is no admission charge.

~~(2) The premise is not licensed and used for the sale of alcoholic beverages, such as a bar or restaurant which has an ABC license and serves alcoholic beverages~~

(2). The premise is defined as "Bona fide Restaurant"

(3) Customer dancing is not allowed.

(4) The entertainment ceases between the hours of 12-2:00 a.m. and 8 6:00 a.m.

